

## MODEL DATA PROCESSING AGREEMENT

between

**Lawson & Thompson Ltd, 205b South Street, St Andrews, KY16 9EF** (the "Controller");

and

*[Insert organisation name, a [e.g. company]]* registered in terms of the Companies Acts with registered number *[registered number]* and having its registered office/main office at **[address]** (the "Processor")

(each a "Party" and together the "Parties")

### WHEREAS

- (a) The Controller and the Processor have entered in to an agreement/contract to **[insert detail]** (hereinafter the "Principal Agreement"/"Principal Contract");
- (b) This Data Processing Agreement forms part of the Principal Agreement/Principal Contract (**\*delete as appropriate**); and
- (c) In consideration of the mutual obligations set out herein, the Parties hereby agree that the terms and conditions set out below shall be added as an Agreement to the Principal Agreement. Except where the context requires otherwise, references in this Agreement to the Principal Agreement are to the Principal Agreement as amended by, and including, this Agreement.

### 1. Definitions

1.1 The terms used in this Agreement shall have the meanings set forth in this Agreement. Capitalised terms not otherwise defined herein shall have the meaning given to them in the Principal Agreement. Except as modified below, the terms of the Principal Agreement/Contract shall remain in full force and effect. In this Agreement, the following terms shall have the meanings set out below and cognate terms shall be construed accordingly:

1.1.1 **"Applicable Laws"** means (a) European Union or Member State laws with respect to any Company Personal Data in respect of which any Company Group Member is subject to EU Data Protection Laws; and (b) any other applicable law with respect to any Controller Personal Data in respect of which any Company Group Member is subject to any other Data Protection Laws;

1.1.2 **"Controller Personal Data"** means any Personal Data Processed by a Contracted Processor on behalf of the Controller pursuant to or in connection with the Principal Agreement/Contract;

1.1.3 **"Contracted Processor"** means Processor or a Subprocessor;

- 1.1.4 **"Data Protection Laws"** means EU Data Protection Laws and, to the extent applicable, the data protection or privacy laws of any other country;
- 1.1.5 **"EEA"** means the European Economic Area;
- 1.1.6 **"EU Data Protection Laws"** means EU Directive 95/46/EC, as transposed into domestic legislation of each Member State and as amended, replaced or superseded from time to time, including by the GDPR and laws implementing or supplementing the GDPR;
- 1.1.7 **"GDPR"** means EU General Data Protection Regulation 2016/679;
- 1.1.8 **"Restricted Transfer"** means:
  - 1.1.8.1 *a transfer of Controller Personal Data from the Controller to a Contracted Processor; or*
  - 1.1.8.2 *an onward transfer of Controller Personal Data from a Contracted Processor to a Contracted Processor, or between two establishments of a Contracted Processor,*in each case, where such transfer would be prohibited by Data Protection Laws (or by the terms of data transfer agreements put in place to address the data transfer restrictions of Data Protection Laws);
- 1.1.9 **"Services"** means the services and other activities to be supplied to or carried out by or on behalf of the Processor for the Controller pursuant to the Principal Agreement/Contract;
- 1.1.10 **"Subprocessor"** means any person (including any third party and any group company, but excluding an employee of the Processor or any of its sub-contractors) appointed by or on behalf of the Processor which is engaged in the Processing of Personal Data on behalf of the Controller in connection with the Principal Agreement/Contract; and
- 1.2 The terms, **"Commission"**, **"Controller"**, **"Data Subject"**, **"Member State"**, **"Personal Data"**, **"Personal Data Breach"**, **"Processing"** and **"Supervisory Authority"** shall have the same meaning as in the GDPR, and their related terms shall be construed accordingly.
- 1.3 The word "include" shall be construed to mean include without limitation, and cognate terms shall be construed accordingly.

## 2. Processing of Controller Personal Data

- 2.1 The Processor shall:
  - 2.1.1 comply with all applicable Data Protection Laws in the Processing of Controller Personal Data; and

- 2.1.2 not Process Controller Personal Data other than on the Controller's documented instructions unless Processing is required by Applicable Laws to which the relevant Contracted Processor is subject, in which case the Processor shall to the extent permitted by Applicable Laws inform the Controller of that legal requirement before the relevant Processing of that Personal Data.
- 2.2 The Controller
  - 2.2.1 instructs the Processor (and authorises the Processor to instruct each Subprocessor) to:
    - 2.2.1.1 *Process Controller Personal Data; and*
    - 2.2.1.2 *in particular, transfer Controller Personal Data to any country or territory;*as reasonably necessary for the provision of the Services and consistent with the Principal Agreement/Contract; and
  - 2.2.2 warrants and represents that it is and will at all relevant times remain duly and effectively authorised to give the instruction set out in section 2.2.1.
- 2.3 The Schedule to this Agreement sets out certain information regarding the Contracted Processors' Processing of the Controller Personal Data as required by article 28(3) of the GDPR (and, possibly, equivalent requirements of other Data Protection Laws). The Controller may make reasonable amendments to the Schedule by written notice to the Processor from time to time as the Controller reasonably considers necessary to meet those requirements. Nothing in the Schedule (including as amended pursuant to this section 2.3) confers any right or imposes any obligation on any party to this Agreement.

### **3. Processor and Personnel**

The Processor shall take reasonable steps to ensure the reliability of any employee, agent or contractor of any Contracted Processor who may have access to the Controller Personal Data, ensuring in each case that access is strictly limited to those individuals who need to know/access the relevant Controller Personal Data, as strictly necessary for the purposes of the Principal Agreement, and to comply with Applicable Laws in the context of that individual's duties to the Contracted Processor, ensuring that all such individuals are subject to confidentiality undertakings or professional or statutory obligations of confidentiality.

#### **4. Security**

- 4.1 Taking into account the latest software, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, the Processor shall in relation to the Controller Personal Data implement appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1) of the GDPR.
- 4.2 In assessing the appropriate level of security, the Processor shall take account in particular of the risks that are presented by Processing, in particular from a Personal Data Breach.

#### **5. Subprocessing [*Drafting note: This clause should be adjusted depending on the arrangements between parties.*]**

- 5.1 The Controller authorises the Processor to appoint (and permit each Subprocessor appointed in accordance with this section 5) to appoint Subprocessors in accordance with this section 5 and any restrictions in the Principal Agreement.
- 5.2 The Processor may continue to use those Subprocessors already engaged by the Processor as at the date of this Agreement, subject to the Processor in each case as soon as practicable meeting the obligations set out in section 5.4.
- 5.3 The Processor shall give the Controller prior written notice of its intention to appoint a Subprocessor, including full details of the Processing to be undertaken by the Subprocessor. The Processor shall not appoint (nor disclose any Controller Personal Data to) the proposed Subprocessor except with the prior written consent of the Controller.
- 5.4 With respect to each Subprocessor, the Processor shall:
  - 5.4.1 before the Subprocessor first Processes Controller Personal Data (or, where relevant, in accordance with section 5.2), carry out adequate due diligence to ensure that the Subprocessor is capable of providing the level of protection for Controller Personal Data required by the Principal Agreement;
  - 5.4.2 ensure that the arrangement between on the one hand (a) the Processor, or (b) the relevant intermediate Subprocessor; and on the other hand the Subprocessor, is governed by a written contract including terms which offer at least the same level of protection for Controller Personal Data as those set out in this Agreement and meet the requirements of article 28(3) of the GDPR;

- 5.4.3 if that arrangement involves a Restricted Transfer, ensure that the Standard Contractual Clauses are at all relevant times incorporated into the agreement between on the one hand (a) the Processor or (b) the relevant intermediate Subprocessor; and on the other hand the Subprocessor, or before the Subprocessor first Processes Controller Personal Data; and
- 5.4.4 provide to the Controller for review such copies of the Contracted Processors' agreements with Subprocessors (which may be redacted to remove confidential commercial information not relevant to the requirements of this Agreement) as the Controller may request from time to time.
- 5.5 The Processor shall ensure that each Subprocessor performs the obligations under sections 2.1, 3, 4, 6.1, 7.2, 8 and 10.1, as they apply to Processing of Controller Personal Data carried out by that Subprocessor, as if it were party to this Agreement in place of the Processor.

## **6. Data Subject Rights**

- 6.1 Taking into account the nature of the Processing, the Processor shall assist the Controller by implementing appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Controller's obligations to respond to requests to exercise Data Subject rights under the Data Protection Laws.
- 6.2 The Processor shall:
  - 6.2.1 promptly notify the Controller if any Contracted Processor receives a request from a Data Subject under any Data Protection Law in respect of Controller Personal Data; and
  - 6.2.2 ensure that the Contracted Processor does not respond to that request except on the documented instructions of the Controller or as required by Applicable Laws to which the Contracted Processor is subject, in which case the Processor shall to the extent permitted by Applicable Laws inform the Controller of that legal requirement before the Contracted Processor responds to the request.

## **7. Personal Data Breach**

- 7.1 The Processor shall notify the Controller without undue delay upon the Processor or any Subprocessor becoming aware of a Personal Data Breach affecting the Controller Personal Data, providing the Controller with sufficient information to allow

it to meet any obligations to report or inform Data Subjects of the Personal Data Breach under the Data Protection Laws.

- 7.2 The Processor shall co-operate with the Controller and at its own expense take such reasonable commercial steps as are directed by the Controller to assist in the investigation, mitigation and remediation of each such Personal Data Breach.

## **8. Data Protection Impact Assessment and Prior Consultation**

The Processor shall provide reasonable assistance to the Controller with any data protection impact assessments, and prior consultations with Supervising Authorities or other competent data privacy authorities, which the Controller reasonably considers to be required by article 35 or 36 of the GDPR or equivalent provisions of any other Data Protection Law, in each case solely in relation to Processing of Controller Personal Data by, and taking into account the nature of the Processing and information available to, the Contracted Processors.

## **9. Deletion or return of Controller Personal Data**

- 9.1 Subject to sections 9.2 and 9.3, the Processor shall promptly and in any event within seven (7) days of the date of cessation of any Services involving the Processing of Controller Personal Data (the "Cessation Date"), delete and procure the deletion of all copies of those Controller Personal Data.
- 9.2 Subject to section 9.3, the Controller may in its absolute discretion by written notice to the Processor within seven (7) days of the Cessation Date require the Processor to (a) return a complete copy of all Controller Personal Data to the Controller by secure file transfer in such format as is reasonably notified by the Controller to the Processor; and (b) delete and procure the deletion of all other copies of Controller Personal Data Processed by any Contracted Processor. The Processor shall comply with any such written request within seven (7) days of the Cessation Date.
- 9.3 Each Contracted Processor may retain Controller Personal Data to the extent required by Applicable Laws and only to the extent and for such period as required by Applicable Laws and always provided that the Processor shall ensure the confidentiality of all such Controller Personal Data and shall ensure that such Controller Personal Data is only Processed as necessary for the purpose(s) specified in the Applicable Laws requiring its storage and for no other purpose.
- 9.4 The Processor shall provide written certification to the Controller that it has fully complied with this section 9 within fourteen (14) days of the Cessation Date.

## **10. Audit rights**

- 10.1 Subject to sections 10.2 and 10.3, the Processor shall make available to the Controller on request all information necessary to demonstrate compliance with this Agreement, and shall allow for and contribute to audits, including inspections, by the Controller or an auditor mandated by the Controller in relation to the Processing of the Controller Personal Data by the Contracted Processors.
- 10.2 Information and audit rights of the Controller only arise under section 10.1 to the extent that the Principal Agreement/Contract does not otherwise give them information and audit rights meeting the relevant requirements of Data Protection Law (including, where applicable, article 28(3)(h) of the GDPR).
- 10.3 Where carrying out an audit of Personal Data, the Controller shall give the Processor reasonable notice of any audit or inspection to be conducted under section 10.1 and shall make (and ensure that each of its mandated auditors makes) reasonable endeavours to avoid causing (or, if it cannot avoid, to minimise) any damage, injury or disruption to the Contracted Processors' premises, equipment, personnel and business while its personnel are on those premises in the course of such an audit or inspection. A Contracted Processor need not give access to its premises for the purposes of such an audit or inspection:
- 10.3.1 to any individual unless they produce reasonable evidence of identity and authority; or
  - 10.3.2 outside normal business hours at those premises, unless the audit or inspection needs to be conducted on an emergency basis and the Controller undertaking an audit has given notice to the Processor that this is the case before attendance outside those hours begins.

## **11. General Terms**

### ***Governing law and jurisdiction***

- 11.1 The Parties hereby submit to the choice of jurisdiction stipulated in the Principal Agreement/Contract with respect to any disputes or claims howsoever arising under this Agreement, including disputes regarding its existence, validity or termination or the consequences of its nullity; and
- 11.2 This Agreement and all non-contractual or other obligations arising out of or in connection with it are governed by the laws of the country or territory stipulated for this purpose in the Principal Agreement/Contract.

***Order of precedence***

- 11.3 Nothing in this Agreement reduces the Processor's obligations under the Principal Agreement/Contract in relation to the protection of Personal Data or permits the Processor to Process (or permit the Processing of) Personal Data in a manner which is prohibited by the Principal Agreement/Contract.
- 11.4 Subject to section 11.2, with regard to the subject matter of this Agreement, in the event of inconsistencies between the provisions of this Agreement and any other agreements between the parties, including the Principal Agreement/Contract and including (except where explicitly agreed otherwise in writing, signed on behalf of the parties) agreements entered into or purported to be entered into after the date of this Agreement, the provisions of this Agreement shall prevail.

***Changes in Data Protection Laws, etc.***

- 11.5 The Controller may:
- 11.5.1 by giving at least twenty-eight (28) days' written notice to the Processor, from time to time make any variations to the terms of the Agreement which are required, as a result of any change in, or decision of a competent authority under, that Data Protection Law, to allow those Restricted Transfers to be made (or continue to be made) without breach of that Data Protection Law; and
  - 11.5.2 propose any other variations to this Agreement which the Controller reasonably considers to be necessary to address the requirements of any Data Protection Law.

***Severance***

- 11.6 Should any provision of this Agreement be invalid or unenforceable, then the remainder of this Agreement shall remain valid and in force. The invalid or unenforceable provision shall be either (i) amended as necessary to ensure its validity and enforceability, while preserving the parties' intentions as closely as possible or, if this is not possible, (ii) construed in a manner as if the invalid or unenforceable part had never been contained therein.



IN WITNESS WHEREOF, this Agreement is entered into and becomes a binding part of the Principal Agreement with effect from the date first set out above.

On behalf of **[Party 1]**

at

on

by

\_\_\_\_\_  
Print full name

\_\_\_\_\_  
Director/Secretary/Authorised

Signatory

before this witness

\_\_\_\_\_  
Print full name

\_\_\_\_\_  
Witness

Address

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
On behalf of the Processor

at

on

by

\_\_\_\_\_  
Print full name

\_\_\_\_\_  
Director/Secretary/Authorised

Signatory

before this witness

\_\_\_\_\_

\_\_\_\_\_

Print full name

Witness

Address

---

---

---